

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

PRIMACY ENGINEERING, INC.,

Plaintiff,

v.

SAN ENGINEERING, CHI WON LEE,
and JK OCEANICS, LLC,

Defendants.

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1:18-CV-129-RP

ORDER

Plaintiff Primacy Engineering, Inc. (“Primacy”) filed its complaint on February 9, 2018. (Dkt. 1). Primacy named SAN Engineering (“SAN”), Chi Won Lee (“Lee”), and JK Oceanics, LLC (“JK Oceanics”) as defendants. To date, only JK Oceanics has been served.

“If a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time.” Fed. R. Civ. P. 4(m). On June 20, 2018, the Court ordered Primacy to show cause as to why it had not served Lee or SAN. (Dkt. 12). Primacy responded by informing the Court that SAN is a Korean company with no offices in the United States and that Lee is a Korean citizen who lives in Korea. (Schachter Aff., Dkt. 13-1, at 1). Primacy’s initial efforts to contact SAN and Lee’s attorneys were unsuccessful; Primacy is now attempting to serve process under the Hague Convention, which it estimates will take 3 to 4 months. (*Id.*).

Under Rule 4(m), the district court has two choices when plaintiff fails to serve defendant within a 90-day period: either “dismiss the action without prejudice . . . or order that service be made within a specified time.” Fed. R. Civ. P. 4(m). If a plaintiff “shows good cause for the failure, the court must extend the time for service for an appropriate period.” *Id.* The Court finds that Lee and

SAN's location outside of the United States is good cause for Primacy's failure to serve them within 90 days of filing its complaint. The Court must therefore extend Primacy's time limit for service for an appropriate period. This action has been pending for only five months. Service of process under the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters often takes considerable time. *See L.K. ex rel. Yarborough v. Mazda Motor Corp.*, No. CIV A 3:09-CV-469-M, 2009 WL 1033334, at *2 (N.D. Tex. Apr. 15, 2009) (allowing sixteen weeks for service under the Hague Convention). The Court finds that four months is an appropriate period by which to extend Primacy's deadline to serve Lee and SAN.

Accordingly, **IT IS ORDERED** that Primacy's time limit to serve Lee and SAN is extended to and includes **October 31, 2018**.

SIGNED on July 11, 2018.



ROBERT PITMAN
UNITED STATES DISTRICT JUDGE